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In the Supreme Court of the United States

OCTOBER TERM, 1983

M. WHARTON YOUNG, M.D.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

M. WHARTON YOUNG, M.D.
3230 Park Place, N. W.
Washington, D. C. 20010
Pro Se

QUESTIONS PRESENTED

I. Whether imposing "TAXATION WITHOUT REPRESENTATION" upon a 'United States citizen' is not itself an open violation of the 'will of the people' that was granted to Congress in the Constitution (Article I (1)), by the people, of the people and for the people? 17, 1, (a) (c)[1]

II. Whether Congress, through its agent, the Commissioner of Internal Revenue, under the Organic Laws of the United States may tax a United States citizen without affording that citizen the right to vote for Congressional representation?[2]

III. Whether Congress, through its agent, the Commissioner of Internal Revenue, may tax an unrepresented citizen of the United States under the enabling clause of the 16th Amendment and Article I (8) 8 of the Constitution when Congress has not acted under the enabling clauses of the 14th, 15th, 19th, 23rd, 24th Amendments or other Constitutional provisions to afford the right to Constitutional representation for all citizens under the "equal protection of the law" (Constitution)?[3]

IV. Whether the U.S. Government's support and practice of Taxation Without Representation, here in its own Capital, is not incompatible and inconsistent with its proclamation and support of "democracy" throughout the world, thus embarrassing its allies and giving aid and comfort to its enemies?[4]

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IN THE SUPREME COURT
OF THE UNITED STATES

M. WHARTON YOUNG, M.D.,

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COMMISSIONER OF INTERNAL REVENUE,

Respondent.

MOTION FOR LEAVE TO PROCEED PRO SE

With review of previous briefs, the petitioner, M. Wharton Young, M.D., asks leave to file the attached petition for writ of certiorari, with payment of costs and to proceed Pro Se (17.1 A & C), and because previous brief (19.1) contains professional and medicolegal issues for review. Petitioner has previously been

granted leave to so proceed in both the U. S. Tax Court and U. S. Court of Appeals for the District of Columbia Circuit.

M. WHARTON YOUNG, M.D.
Pro Se

NO.

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1983

M. WHARTON YOUNG, M.D.,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

The petitioner, M. Wharton Young, M.D., respectfully prays that a writ of certiorari issue to review the judgment and memorandum opinion of the United States Court of Appeals for the District of Columbia Circuit entered in this proceeding on December 13, 1983 (Appendix A); also to my appeal for

en banc consideration on January 11, 1984 (Appendix B).

OPINION BELOW

The memorandum opinion of the Court of Appeals appears in the Appendix hereto.

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia Circuit was entered on December 13, 1983. A timely petition for rehearing en banc was denied on January 11, 1984, and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254 (1).

QUESTIONS PRESENTED

I. Whether imposing "TAXATION WITHOUT REPRESENTATION" upon a 'United States citizen' is not itself an open violation of the 'will of the people' that was granted to Congress in the Constitution (Article I (1), by the

people, of the people and for the people? 17, 1, (a) (c) [1]

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"equal protection of the law" (Constitution)? 3/

IV. Whether the U. S. Government's support and practice of Taxation Without Representation, here in its own Capital, is not incompatible and inconsistent with its proclamation and support of "democracy" throughout the world, thus embarrassing its allies and giving aid and comfort to its enemies? 4/

STATEMENT OF THE CASE

This case is before the Court on my appeal from the dismissal of my appeal from the Tax Court's decision (Appendix C) granting the Commissioner's motion to dismiss for failure to state a claim upon which relief can be granted; ergo, the U. S. Constitution did not protect me and was hence ignored as a defense against admitted "Taxation Without Representation."

The Commissioner of Internal Revenue, in his notice of deficiency issued to me on August 10, 1982, determined a deficiency in my Federal income tax and an addition to the tax under section 6653 (a) for the taxable year 1979 in the amounts of $8,140.00 and $407.00, respectively. I believed that this pecuniary matter of a single year (1979) was superseded by the Constitutional issue (1776) supporting our democracy (500 B.C.).

I, a retired physician-surgeon-scientist, am approximately 80 years of age and have been a resident of the District of Columbia for more than fifty years. On the date of filing my petition, I resided at 3230 Park Place, N. W., Washington, D. C., where I have resided continuously for over forty years without having ONCE been allowed to vote for one single Senator or Congressman to represent me in the U. S. Legislature to participate in the democratic

processes. I filed an individual 1979 Federal Income Tax return "under protest and duress" with the Internal Revenue Service. Therein, I reported wages of $7,463.00, interest income of $1,539.00 from six sources listed; and I reported fully taxable pension income of $339.00. Appellee, in his deficiency notice, has given me credit for the interest and pension income reported on my return and has determined that I, in 1979, received interest and pension income in respective amounts of $8,761.00 and $16,233.00, but no REPRESENTATION in the Congress, while being taxed.

REASON FOR GRANTING THE WRIT

1. The decisions below rely upon legal precedent which can only be addressed by this Honorable Court which made the previous rulings; hence, I plead for certiorari for review at this time.

The principle that there can be "no taxation without representation" precludes the Internal Revenue Service, a member of the Federal Government, from collecting Federal tax from me, as long as I am excluded from selecting (voting for) my legislative representative.

The watchword of this Government has been democracy,[5/] "government by the people" and "no taxation without representation." The primary piece of "organic law" of the United States is the Constitution. The Constitution itself does not contain the words there shall be "no taxation without representation"; however, the Constitution is not the only piece of "organic law" of the United States of America. There is also the "Declaration of Independence." In that document are listed the abuses committed by the then king of Great Britain, one of which was "for imposing taxes on us without our

consent." There is no clearer statement of the concept of no taxation without representation. The people of these United States give their consent by the election of members to the Congress of the United States who have full voting rights--two Senators and a proportionate number of representatives.

It is suggested in the decision of the Tax Court that the District of Columbia has a representative in Congress, but the decision of the Tax Court deliberately leaves out the essential fact that the elected representative himself is nonvoting. As such, the issue of taxation without representation is not resolved by that representative, but merely exaggerates the inconsistency.

The "Declaration of Independence," in listing the abuses of the king, contained the proclamation that:

> "He had refused to pass other laws for the accommodation of large abstracts of people, unless those people would relinquish the right of representation in the legislature, a right inestimable of them, and formidable to tyrants only." (emphasis added)

The Declaration of Independence (Freedom) refers specifically on to the EQUALITY of creation (structure) and 'station' (place and/or position) and "...the laws of nature and nature's God entitles..." (obviously above any and/or man-made laws which seek a higher and/or) ...to form a more perfect Constitution which must be improved (amended) with time in 1787. Indeed, only two years later, we established 'The Bill of Rights' comprised of more restraints (10) than the seven (7) enabling articles. It is interesting to note that the reluctance to adopt these 'first ten amendments' extends for over 150 years before Massachusetts and Georgia finally ratified them in 1939. The

Supreme Court has likewise shown a reluctance, as has the Legislature, to grant all citizens "equal protection of the law." (Constitutional laws that protect the citizen from invasion of his or her fundamental RIGHTS of "Nature and Nature's God.") The original Greek 'democracy' (excluding slaves and women) has gone through many bloody efforts [6/] to attain a more perfect law that is acceptable to "...a decent respect to the opinions of mankind...." Are we willing to declare to the powers and people of this world that we still endorse and enforce "Taxation Without Representation" here in the capital of the world's democracy for which millions have died? Furthermore, the inalienable rights of free men are entrusted to the governments of men who derive their JUST powers from those who are being governed. The limited franchise of the Greek's democracy was evolved by overthrow-

ing the tyranny of King George III (1776) and still later, after "four score and seven years..." by giving the former slaves their equal franchise in 1865 and 1868, and by two (2) World Wars (1917 and 1941) enhanced by subsequent Amendments XV (1870) thru XXVIII, and the extension of the "Voting Rights Bill" in 1983, just ten score and seven years later. Can the highest court in this Democracy support "Taxation Without Representation" in 1984 as its 'dying declaration' as we face certain atomic death on Doomsday?

The framers of the Declaration of Independence and the Constitution felt that the right to representation in the legislature was a right which was inestimable to the people in a democracy. I pose the question, "Is that right to VOTE any less inestimable to me? Am I not denied representation in the legislature while being subject to pay an illegal tax?"

I submit to this Court that the rationale in Heald v. District of Columbia, 259, U.S. 114, 124 (1922), stating that "There is no constitutional provision which so limits the power of Congress that taxes can be imposed only upon those who have political representation" is incorrect and incompatible with democracy and must be set aside as in 1776 because it supports the contention of King George III. The rationale of Heald implies that the Constitution is a document which sets out limits and anything not limited is granted. Nothing could be further from the truth. The reality is that anything not granted is not to be implied. 7/

The Heald decision relied upon by the Court of Appeals does not support the claim that the Congress of the United States may collect Federal taxes from citizens without affording representation because the court's decision rests on an invalid assumption.

The Heald Court assumes that absence of a clause allowing Congress to act, Congress may act because there is no constitutional provision limiting that action. This negative reasoning is contradictory to the concepts underlying our democratic and tripartite system. Their concept is that the Constitution is the supreme law of the land, not the Government; consequently, it follows that in order for a governmental condition to be valid in the United States, it must be expressly stated therein or it must logically flow from within the "supreme Constitution," not the people, the states, the executive or judicial branches.

The Court below relied upon the case of Breakefield v. District of Columbia, 442 F. 1227 (1971) to support its memorandum that the imposition of a tax was constitutional. I submit to this Honorable Court that the facts in Breakefield and the facts in Heald

are not identical to the facts I bring before you, and those cases should not be used as the authority to deny me redress of my grievances. I further submit that the Court below in Breakefield clearly states that if there is error, that error properly lies before this court. Breakefield at 1230, "...it is for the Supreme Court, not us, to proclaim error in its past rulings...."

I have not consented to be taxed because I have not voted for legislators to express my consent nor have I relinquished my right of representation. But the United States has denied me my right of representation while continuing to impose upon me an illegal tax which is inconsistent and incompatible with justice, logic, truth and democracy.

2. The memorandum decision below does not address the issue raised.

The memorandum opinion of the Court of Appeals for the District of Columbia Circuit states that a taxpayer may not lawfully resist paying taxes on religious, humanitarian or moral grounds and, thereby, dismisses my appeal without addressing the fundamental constitutional questions which I have raised.

The taxing power of the United States is found in two grants of authority, Article I, section 8 of the United States Constitution and the 16th amendment to the United States Constitution. The right to vote is both stated and implied throughout the Constitution in providing for the election of legislators and the President, and expressed in the amendments, specifically, the 14th, 15th, 19th, 24th, and 26th. 8/

When Article I, section 8, and the 16th amendment are contrasted to the 15th, 19th, 24th and 26th amendments, we see that Congress has used its authority to levy and

collect taxes and has been diligent in the levying and collecting of taxes. However, I pose the question, "Why hasn't Congress been as diligent under the enabling clauses of the 15th, 16th, 24th, 26th, and other amendments in granting me my right to vote?" If Congress, through its agent, the Internal Revenue Service, is seeking redress before this Court to collect taxes, I submit to you that they do not have ethical nor legal standing to do so, mainly because their "hands are not clean." The Constitution cannot be partially utilized; it must be implemented in full or not at all. 9/ Why do so many of the multi-million dollar corporations operate "legally tax-free" in the District of Columbia, while I, an octogenarian--sick, blind (from glaucoma), and unemployed, do not enjoy such legal protection?

CONCLUSION

The Court below erred in dismissing my appeal without oral argument which would have afforded me the opportunity to present my claim through "freedom of speech" in my own behalf, as guaranteed by the Bill of Rights. Also, the Tax Court has denied me a jury trial as guaranteed by Article VII of the Constitution. The United States through its agent, the Commissioner of Internal Revenue, cannot be allowed to ignore my constitutional rights as though they did not exist and continue to collect taxes against me while denying me the right to vote or even speak in my own behalf to my peers or to any judge "hearing" my case.

I submit that it is not even in the best interest of the United States itself, which has fought two world wars to make the "world safe for democracy" while denying me, one of its own citizens, the right to vote,

particularly when that citizen has lived 50 years in the capital of that democracy. The two issues are mutually exclusive and cannot co-exist; hence, our vaunted democracy should prevail and thus sustain "...decent respect to the opinions of mankind."

For these reasons, a writ of certiorari should issue to review the judgment and memorandum opinion of the Court of Appeals for the District of Columbia Circuit.

As a physician, under my solemn Oath to Hippocrates, my medical jurisprudence obliges me to respectfully admonish this Honorable Supreme Court, individually and severally, that our Doomsday with Atomic Annihilation is as imminent as a local "pushbutton"; ergo, your response to the above issue will constitute a true "dying declaration" to the Court "...of Nature and Nature's God." (Declaration of Independence,

just ten (10) score and seven (7) years ago.)

Respectfully submitted,

M. WHARTON YOUNG, M.D.
3230 Park Place, N. W.
Washington, D. C. 20010

Pro Se

FOOTNOTES

1/Gettysburg Address (1853). Declaration of Independence (1776). Constitution (1776).

2/Enabling provision of Amendment 14 et al versus restraining provisions of Bill of Rights not equally applied or enforced.

3/Article I(8) 8. To promote the progress of science...by securing for authors and inventors the exclusive right to their respective writings and discoveries: like Hitler's SECRET WEAPON (1944).

4/"That to secure these rights, Governments are instituted among men, deriving their just powers from the consent of the governed...." (Declaration of Independence, 1776). Premier Stalin at the Potsdam Conference (1945) admonished our Secretary of State Burns that while he pleaded for "free elections in the Balkans," over half of his South Carolina CITIZENS could not even VOTE.

5/From the Greek's word and practice (500 B.C.) Demos "people" and Kratos "rule."

6/Over 20,000 died on July 1st, 2nd, and 3rd, 1863, before July 4th gave this nation "a new birth of freedom" four score and seven years after 1776 (Lincoln's Gettysburg address).

7/10th Amendment. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

8/Beginning on June 15, 1215 with the Magna Carta, through the Declaration of Independence, the United States Constitution, and the 15th, 19th, 24th, and 26th amendments, there has been a progressive extension of the franchise to ALL CITIZENS. Plus extension of "Voter's Rights Bill (law)" (1983).

[9]/Amendment XXIII(1), 1961. Partial, but not complete franchise granted to CITIZENS of the District of Columbia.

NO.

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1983

M. WHARTON YOUNG, M.D.,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PROOF OF SERVICE

WASHINGTON
DISTRICT OF COLUMBIA

M. WHARTON YOUNG, M.D., after being duly sworn, deposes and says that pursuant to Rule 28.4(a) of this Court, he served the within MOTION FOR LEAVE TO PROCEED IN PRO SE and PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT as Pro Se counsel for the respondent by enclosing a copy

thereof in an envelope, first class postage prepaid, addressed to:

Solicitor General of the United States
Department of Justice
Washington, D. C. 20530

Michael L. Paup, Esquire
Chief, Appellate Section
Tax Division
U. S. Department of Justice
Washington, D. C. 20530

and depositing same in the United States mails at Washington, D. C. on 13 March 1984.

M. Wharton Young, Pro Se

APPENDICES

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 83-1381 September Term, 1983
Tax Ct. No. 26472-82

M. WHARTON YOUNG, Appellant

v.

COMMISSIONER OF INTERNAL REVENUE

Appeal from the United States Tax Court

BEFORE: GINSBURG, BORK, and STARR, Circuit Judges.

JUDGMENT

This appeal from a February 1983 order and decision of the United States Tax Court was briefed by the parties. We have accorded full consideration to the issues presented; they occasion no need for an opinion. See D. C. Cir. R. 11(d), 13(c). For the reasons stated in the accompanying memorandum, it is

ORDERED and ADJUDGED that the final order on review herein is affirmed. It is

FURTHER ORDERED by this Court, on its own motion, that the Clerk shall withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearsing. See Local Rule 14, as

amended on November 30, 1981, and June 15, 1982.

Per Curiam

For the Court

George A. Fisher
Clerk

Bills of costs must be filed within 14 days after entry of judgment. The Court looks with disfavor upon motions to file bills of costs out of time.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 83-1381 September Term, 1983

M. WHARTON YOUNG,
Appellant

v.

COMMISSIONER OF INTERNAL REVENUE,
Appellee

BEFORE: GINSBURG, BORK and STARR,
Circuit Judges

O R D E R

On consideration of the Petition for Rehearsing of Appellant, filed December 22, 1983, it is

ORDERED by the Court that the aforesaid Petition is denied.

For the Court:

GEORGE A. FISHER, Clerk

By:
Robert A. Bonner
Chief Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 83-1381 September Term, 1983

M. WHARTON YOUNG,
Appellant

v.

COMMISSIONER OF INTERNAL REVENUE.
Appellee

BEFORE: ROBINSON, Chief Judge; WRIGHT, TAMM, WILKEY, WALD, MIKVA, EDWARDS, GINSBURG, BORK, SCALIA and STARR Circuit Judges

O R D E R

The Suggestion of Rehearsing en banc of Appellant, filed December 22, 1983, has been circulated to the full Court and no member has requested the taking of a vote thereon. On consideration of the foregoing, it is

ORDERED by the Court en banc that the aforesaid suggestion is denied.

For the Court:

GEORGE A. FISHER, Clerk

By:
Robert A. Bonner
Chief Deputy Clerk

No. 83-1381

M. Wharton Young v. Commissioner of the IRS

MEMORANDUM

As explained in the opinion of the special trial judge, which the Tax Court adopted, well-settled precedent forecloses appellant's argument that District of Columbia residents, because they lack representation in Congress, need not pay Federal income tax. Heald v. District of Columbia, 259 U.S. 114, 124 (1922); Breakefield v. District of Columbia, 442 F.2d 1227 (D. C. Cir. 1970), cert. denied, 401 U.S. 909 (1971). Nor may a taxpayer lawfully resist reporting income and paying tax due thereon on moral, humanitarian, or religious grounds. See, e.g., Graves v. C.I.R., 579 F.2d 392 (6th Cir. 1978), cert. denied, 440 U.S. 946 (1979); Habersham-Bey v. C.I.R., 78 T.C. 304, 310 (1982); Tingle v. C.I.R., 73 T.C. 816

(1980). Further, a taxpayer may not defend in the Tax Court against an asserted deficiency on the ground that he merits compensation for services he rendered or money he spent in advancing the nation's security and welfare. See I.R.C. §§6214(a), 7442 (1976) (describing tax jurisdiction); Morse v. United States, 494 F.2d 876, 879 (9th Cir. 1974) (tax court jurisdiction limited to determining amount of deficiency or overpayment for challenged year).

Appellant does not contend that he did not receive the unreported income determined by the Commissioner for 1979. His case thus presents no genuine issue of material fact, and the Tax Court correctly ruled that he stated no tenable legal ground in support of his claim for relief.